

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3781 OF 2004

Iqbal Hasan Ibrahim Kaskar ..Applicant.

V/s.

State of Maharashtra ..Respondent.
(DCB CID Unit I vide CR NO.20/03)

Shri A.P. Mundargi with Yogesh R. Isarani for the Applicant.
Ms.P.H. Kantharia, APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 16, 2004

PC :-

1. This application is filed by Accused No.3 for bail. The Applicant is named as accused in relation to the alleged offence which was originally registered as C.R. No. 58/2003 at MRA Marg Police Station, now registered as C.R. No. 20/2003 with DCB CID Unit -I for offence under sections 384, 387, 392, 34 120(B) of IPC read with 3(ii), 3(2), 3(4) and 4 of Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as MCOCA for the sake of brevity).

2. In so far as the present Applicant accused No.3 is concerned, after investigation, the

chargesheet as filed before the trial court, has articulated the allegations against the Applicant as under :-

"Firstly : That you accused No.1 Abdul Rehman Abdul Gafoor Shaikh @ Rehman Boss, you accused No.2, Abdul Sattar Haji Jiva Radhanpur @ Sattar Teli, and you accused No.3, Iqbal Hasan Shaikh Ibrahim Kasker @ Arab Saab have entered into a criminal conspiracy along with the wanted accused namely Dawood Ibrahim Kaskar, Shaikh Babu Mohiddin Shaikh @ Chhota Shakeel, Tariq Abdul Kareem Parveen and other persons to commit continuing unlawful activities in the city of Mumbai from 1997 to date. In furtherance of your common intention and in pursuance of the criminal conspiracy entered by you all with the common object of acquiring Government properties belonging to Central Public Works Department, situated at 16 Saboo Siddique Road, C.S. No. 14/1504, Fort Division, Musafirkhana, Mumbai and other properties in and around Mumbai. In furtherance of aforesaid conspiracy you all have obtained illegal permission from Municipal Corporation of Greater Mumbai, with full knowledge that the property cannot be acquired as it was reserved for Municipal School and Transport. In spite of aforesaid knowledge you all did commit illegal and unlawful activities by constructing illegal structures/ changing the structures on the properties for your unlawful gain and for the benefit of the Organized Crime Syndicate headed by Dawood Ibrahim Kasker, Chhota Shakeel and Iqbal Ibrahim Kasker and thereby committed offences punishable under section 120-B r/w. 384, 387, 392, r/w. 34 I.P.C and 3(1)(ii), 3(2), 3(4), 3(5) and 4 of M.C.O.C. Act, 1999.

Secondly : Pursuant to the criminal conspiracy you accused No. 1 to 2 have unlawfully dispossessed the occupants from the

originally existing structures belonging to the C.P.W.D. by using force, threats and extortion and by intimidating the occupants to leave their occupancy by threatening their lives and properties, on behalf of accused No.3 Iqbal Kaskar and on behalf of the wanted accused Dawood Ibrahim Kasker, Chhota Shakeel, Tariq Parveen and others for the pecuniary benefits of the Organized Crime Syndicate and also for your own benefits, by aiding and abetting each other and thereby committed offence punishable under section 3(2) of M.C.O.C. Act, 1999.

Thirdly : That you accused No.1 and 2, as the front-men of the Organized Crime Syndicate, and at the instance of accused No.3 Iqbal Kaskar under whose instructions on telephone from Dubai and under his dictates you are illegally holding the properties of the Central Public Works Department, by constructing illegal structures, and allowing various persons to use the same, by taking huge amounts from about 370 occupants, for the benefit of the Organized Crime Syndicate and for the benefit of the members of the Organized Crime Syndicate, in the name and style of Global Marketing/Sara Shoppe, Sahara Shoppe and Sara Corner from the period Septemebr, 2000 to date. Pursuant to the aforesaid conspiracy you are holding benami properties derived of obtained from commission of organized crimes and have been acquired through the organized crime syndicate funds, as the members of the Syndicate and thereby committed an offence, under section 3(4) and 3(5) of M.C.O.C. Act, 1999.

Fourthly : That you accused No. and 2, as the front-men of the Organized Crime Syndicate, and at the instance of accused No.3 Iqbal Kaskar under whose instructions on telephone from Dubai and under his dictates you are illegally holding the properties of the Central Public Works Department, by constructing illegal structures, and allowing various persons to use the same, by taking huge amounts from about 370 occupants, for the

benefit of the Organized Crime Syndicate and for the benefit of the members of the Organized Crime Syndicate, in the name and style of Global Marketing /Sara Shoppe, Sahara Shoppe and Sara Corner from the period September 2000 to date. Pursuant to the aforesaid conspiracy you are holding benami properties derived of obtained from commission of organized crimes and have been acquired through the organized crime syndicate funds, as the members of the Syndicate and is in possession of moveable and immovable property which you cannot satisfactorily account for and thereby committed an offence, under section 4 of the M.C.O.C. Act 1999.

In support of the above allegations the prosecution has relied on the materials in the shape of statement of witnesses, documentary evidence, audio cassettes - which records the telephonic conversation between the applicant and others.

3. The contentions raised on behalf of the applicant for being released on bail are more or less reiterated as were advanced before the court below. In substance, the argument is that there was no material before the appropriate authority so as to accord approval under section 23(1)(a) for recording of information of the offence under the present Act. In other words, it is argued that the approval granted by the appropriate authority for recording of information is illegal. It is then contended that

there is no material on record so as to indicate the complicity of the applicant accused No.3 in commission of the alleged offence. It is contended that in none of the statements relied upon by the prosecution any specific role has been attributed to the applicant. In other words, it is argued that the materials which are pressed into service by the prosecution does not attribute any criminal activity on the part of the applicant. It was argued that there is nothing on record, much less legal evidence, to show that the applicant was involved in the development / construction of any project of Sara Shopping Complex. In so far as the confessional statement of Tariq Parveen pressed into service on behalf of the prosecution, it is argued that the same cannot be looked into because he has been named as accused in the same offence. Besides, it is contended that this statement is an after thought and has been recorded only to cover up the lacuna in the prosecution only when the bail application of the applicant was to be considered before the court below. It is also contended that assuming that the Applicant had taken interest in any commercial project that by itself does not attract the draconian provisions of the MCOCA. It was argued that in so far as other properties are

concerned, except the Ice Factory Property, which has been described in different names, there is nothing on record to show that the applicant had invested or completed any project. Even in respect of the Ice factory there is no material to show that any element of force was used by the Applicant. At best, the material would indicate that the applicant showed interest in the said property, which is not enough to attract the provisions of the Act. This argument is advanced without prejudice to the argument that the applicant was not connected even in respect of project of the Ice Factory. Whereas, according to the applicant, the material on record would indicate that it is accused No.5 who had threatened the concerned persons in relation to that project. The case made out by the prosecution is at best one of name dropping of the applicant; That cannot be the basis to make the applicant liable for the alleged offence committed by that accused under the special enactment. On the above arguments, it was contended that taking the entire material as it is, this court can safely conclude that there was no legal evidence to indicate the complicity of the applicant in relation to the offence under the special enactment or for that matter any offence; and in that view of the matter, the

applicant should be released on bail.

4. The application is resisted by the public prosecutor. According to her, the lower court has rightly rejected the bail application having taken into account the relevant materials which were pressed into service on behalf of the prosecution. Besides, adopting the reasons recorded by the lower court as her argument, the learned public prosecutor has invited my attention to the relevant materials in the shape of transcription of the tape recorded conversation between the applicant and others; the statements of witnesses who were forcibly evicted and to whom threats were given in the name of Dawood Ibrahim and Chhota Shakeel and the applicant herein. Similarly, the statement of other set of witnesses who were tenants and occupying the property in question, later on evicted on making payment so as to develop the property; statements of other witnesses who have deposed about the interest shown by the applicant in the property in South Mumbai and the properties in question; statements of witnesses who have identified the voice of the applicant, as appearing in the recorded telephonic conversation of the applicant and also of the other persons. Emphasis was also placed

on the statement of independent witnesses who spoke about the involvement of the applicant. Reliance is placed on the witnesses who were present at the meeting where deal was being negotiated, to show how threats were given to the owner of the Ice Factory and later on the said property was developed by accused No.5. Learned Public Prosecutor submits that the prosecution case is essentially that the applicant is a co-conspirator. There are strong circumstances, which clearly point a finger towards the involvement of the applicant in the commission of the alleged continuing unlawful activity. It is further submitted that the principal accused who is the master mind of this conspiracy is still at large and has successfully avoided his arrest so far. He is incidently, the brother of the applicant i.e. Dawood Ibrahim Kasker. Even the co-accused - Chhota Shakeel is absconding. It is, therefore, submitted that there is sufficient material on record to indicate the complicity of the applicant in the commission of the alleged offence. It is argued that in view of the overwhelming materials on record, it is not possible for this court to jump to a conclusion that there are reasonable grounds to believe that the applicant is not guilty of the alleged offence and if such a finding cannot be

recorded, it is not open to this court to release the applicant on bail in view of the mandate of section 21 of the Act. It is further submitted that having regard to the continuing unlawful activity of the organized crime syndicate of which the applicant is a member, in the event the applicant is released, in all probability he may indulge in the same or similar type of offence either himself or through others. Besides, there is strong possibility of the applicant influencing the prosecution witnesses or tamper the prosecution evidence, if released on bail. That the members of the organized crime syndicate who have been named as co-accused in the present case are resourceful persons and it is the prosecution case that they have even influenced the officials of the corporation in their design to carry on with the continuing unlawful activity for gaining pecuniary benefits or economic benefits either for himself or for organized crime syndicate or others. In such a situation, it will be inappropriate to grant bail to the present applicant.

5. Having considered the rival submissions and going through the records relied upon by the parties. I shall first deal with the argument that the approval

as granted is illegal as there was no material before the authority to apply the draconian provision of the MCOCA. The argument is that the applicant returned to India on 19.02.2003 and came to be arrested on 20.02.2003. The complaint of Nafisa is lodged on 05.03.2003 and the applicant is shown as arrested in relation to the present crime on 06.03.2003, in relation to which approval to record information for offence under MCOCA was granted on 12.03.2003. It is contended that except the complaint of Nafisa there was no other material and that the complaint of Nafisa by itself does not make out offence under the MCOCA. This submission clearly overlooks the materials on record. My attention has been rightly invited by the learned P.P. to the statements of witnesses recorded on 08.03.2003 and 09.03.2003 as well as the recorded telephonic conversations prior to 12.03.2003, which, in fact, were the basis to accord approval under section 23(1)(a) of the Act. In other words, there is no substance in the argument that there was no material at all before the authority which granted approval under section 23(1)(a) on 12.03.2003.

6. That takes me to the arguments on merits. I am in agreement with the conclusion reached by the

court below in rejecting the bail application preferred by the present applicant. The court below has adverted to the relevant materials while referring to the contentions of both the sides and has found that the statements of witnesses, the documentary evidence on record, as well as the telephonic conversation between the applicant and others clearly indicate the complicity of the applicant in relation to the alleged offence. Needless to observe that this court is presently called upon to only consider prayer for bail. It is not necessary to evaluate the entire evidence which is relied upon by the prosecution in support of its case. Besides, the bar under section 21 will have to be kept in mind which requires that the court should be satisfied that there are reasonable grounds to believe that the applicant is not guilty of the alleged offence. It is also relevant to note that further investigation is still in progress, although the prosecution has already filed supplementary chargesheet on the earlier occasion. This is obviously because of the complexity of the case and the nature of evidence. Materials which are already collected by the prosecution in the shape of statements of witnesses as well as documentary evidence and audio cassettes which records

the telephonic conversation of the applicant with others clearly indicate the complicity of the applicant in the commission of the alleged offence. Indeed, the prosecution case is one of the conspiracy hatched of which the applicant is a co-conspirator. The argument of the applicant that the applicant was throughout out of India till he returned on 19th February, 2003, is of no consequence. Merely because he remained out of India that does not mean that he could not have been party to the said conspiracy. There is material on record to show that the applicant has shown interest in the development of the properties in South Mumbai and the recorded telephonic conversation also reinforces this position. The voice of the applicant, as recorded in the telephonic conversation, has been identified by the witnesses. For the time being, the material collected by the prosecution will have to be accepted as it is. From the said materials, it does appear that the applicant was keenly following the development activity of the project. He was taking interest even in small details like the fencing and the size of the entrance of the complex and other incidental matters. The conversation also indicates that he had shown concern about the occupants on the property which may affect

the construction activity, to which response was given. While considering the bail applications of the co-accused, I have already taken the view that there is material regarding conspiracy hatched for the commission of the alleged offence. If it is a case of conspiracy and there is material to show that the applicant was a co-conspirator then merely because the applicant himself has not directly interacted with the witnesses that will make no difference. According to the applicant it is the case of name dropping. This argument seems to be attractive but it is devoid of any substance. It is not a case of name dropping as such. However, material does indicate the interest taken by the Applicant so that the development work proceeds unhindered. The other accused persons assured the progress of the work by whatever means. There is evidence on record that some of the occupants have been forcibly evicted though some have been evicted on payment. The later persons have accepted the payment as it appears from their statements, under compelling circumstances. Although the prosecution may have come out with the case that the applicant has shown interest in various properties in South Mumbai and assuming that such material is not forthcoming or that the material as relied by the prosecution is not

sufficient to support that case, but there is material at least of active interest taken in the development of Shopping Complex and the Ice Factory Plot. This material for the time being is sufficient to deal with the prayer for bail as pressed into service on behalf of the applicant. If it is so, it is not possible to accept the argument that the applicant is falsely implicated and it is only a case of name dropping, as contended. There is something more on record to indicate the complicity of the applicant in relation to the alleged offence. It was argued on behalf of the applicant that the material on record does indicate that when ever the applicant found that the project was unviable, the same was not pursued further. It was argued that if the applicant wanted to use force, he could have made that attempt even in respect of those projects. It is not possible to enter into this debate while considering the bail application. The reasons which weighed with the applicant for not pursuing the other projects, does not mean that the applicant was not involved in any project at all. On going through the materials on record, I am in agreement with the conclusion reached by the Court below that statements of witnesses on record, does indicate that threats were given to them

in the name of Dawood Ibrahim, Chhota Shakeel as well as the applicant herein. The witnesses have deposed about the design of the accused persons, in this case, to develop the property illegally and reap huge profits by the organized crime syndicate by illegal constructions. The lawful occupants were forcibly evicted and reign of terror was created. While considering the bail application of the co-accused, I had occasion to advert to the bogus documents created by the accused with a view to encroach on the government property. The documents were created in the name of non-existing persons, which fact has been unravelled during the investigation. Much emphasis was placed that the statement of Tariq Parveen cannot be looked into. However, it is seen that there is independent material on record to show the complicity of Applicant in the commission of the alleged offence. The statements of other witnesses as well as the recorded telephonic conversation is sufficient for the time being while considering the prayer for bail. As mentioned earlier, the applicant being party to the conspiracy and as there is enough material on record to indicate his complicity in relation to the alleged offence, it is not open for this court to take the view that there are reasonable grounds to believe that

the applicant is not guilty of the alleged offence. If it is so, the application should fail on this ground alone.

7. There is additional reason why application will have to be rejected. I am in agreement with the conclusion reached by the court below that as the prime accused who are the master-mind of the organized crime syndicate of which the applicant is also a member, are absconding and are indulging in continuing unlawful activity unabated, there is strong possibility that if the applicant is released on bail, he may indulge in the offence of same or similar type. With such finding, it is not open to the court to grant bail in view of bar of section 21(4) of the Act. More over, I find substance in the apprehension expressed by the prosecution that if the applicant is released on bail in all probability, the applicant would try to influence the prosecution witnesses or tamper the prosecution evidence. This possibility cannot be ruled out, having regard to the fact that the applicant is a resourceful person and also because of the seriousness of the offence. Even this is a good ground for refusing to show any indulgence to the present applicant.

8. Taking over all view of the matter, I find no substance in this application. The same will have to be, therefore, dismissed. The court below has already observed that the Applicant is entitled for early trial. The trial court is directed to expedite the trial and ensure early disposal thereof. Ordered accordingly.

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